

*CREATING A NEW ORGANIZATION
FOR CONSERVATION AND RENEWABLE RESOURCES*
SB 1149/ORS 757.612(3) Implementation
Proposal

Preface

This proposal is intended to provide the rationale and approach behind the development of a new nonprofit organization to administer the conservation and renewable resource funds pursuant to SB 1149/ORS 757.612(3). This document was developed over the summer of 2000 and distributed widely among parties interested in the process. Along with two other documents, it provides a complete analysis of the recommendations to the Commission on the steps needed to move forward. The two other documents are:

- ✦ A memo written in question-and-answer format addressing specific questions that have been raised about the recommendations and process, including input from participants in the July 20, 2000 public purposes workshop; and
- ✦ A memo written by William Manne and Gary McGee offering specific legal and accounting opinions about details of the proposal.

Overview

Senate Bill 1149 was signed into law in July 1999. The law begins the process of offering customers power supply choices other than bundled service from local electric utilities. At this time, the provisions of the law only affect Portland General Electric (PGE) and PacifiCorp (Pacific), Oregon's two largest investor-owned utilities.

SB 1149 contains specific provisions that require the two utilities to collect a three-percent public purpose charge from all customers when direct access to competitive energy markets is offered to nonresidential customers. The funds will be collected for 10 years and will be allocated according to specified percentages to five public purposes: (1) conservation in schools; (2) new cost-effective conservation and new market transformation; (3) above-market costs of new renewable energy resources; (4) new low-income weatherization; and (5) low-income housing. Administrators for the funds collected for schools, low-income weatherization, and low-income housing are specified in the law. The Oregon Public Utility Commission (Commission or PUC) is responsible for determining whether the utilities or a "non-governmental entity" will be the administrator for the funds collected for investment in conservation and renewable resources.

In February 2000, the Commission concluded that a nonprofit organization would be best suited to fulfill the requirements of the legislation and approved a staff recommendation to begin the process of establishing a new nonprofit organization to administer the conservation and renewable portions of SB 1149 public purpose funds.

To support the task of creating a new nonprofit organization, Lynn Kittilson, staff for the PUC, convened a committee to define the governance structure, direction and genesis of the new organization. The convening committee included Carol Brown, Portland General Electric; Jason Eisdorfer, Citizens' Utility Board; Margie Gardner, Northwest Energy Efficiency Alliance; Jeff Harris, Northwest Power Planning Council; Brian Hedman, PacifiCorp; Stan Price, Northwest Energy Efficiency Council; John Savage, Oregon Office of Energy; and Peter West, Renewable Northwest Project. Marc Smiley, an organizational development consultant, was hired to support the process, paid with funds advanced by PGE and Pacific from future collections of public purpose charges.

This report is the culmination of several months of discussions by the convening committee on how to get the new organization off the ground. These recommendations were developed and distributed broadly to parties expressing an interest in the new organization. A public workshop was held on July 20, 2000 to give interested parties an opportunity to ask questions and state their concerns about the proposal. The ideas and suggestions provided at that meeting and in subsequent written comments have been addressed and, where appropriate, incorporated into this proposal. Specific responses to questions raised through the process have been developed in a separate question-and-answer addendum to this proposal.

In addition, legal and accounting advice has been sought from experts in nonprofit legal and financial issues. Gary McGee, CPA, Managing Director of Gary McGee & Associates, and William S. Manne, partner with the law firm of Miller/Nash, are considered among the most knowledgeable and experienced experts in the field of nonprofit organizations. Both provided considerable input to the details incorporated into this proposal. Their memo highlighting several key issues in the development of the new nonprofit is included with this proposal.

This proposal contains the following:

- + Description of the purpose of the organization.
- + Description of the framework and structure of the organization, some elements of which will be included in the organization's bylaws.
- + Guidelines for how the organization will operate, which will serve as a foundation for a grant agreement between the PUC and the organization.
- + A proposed timeline for the next steps of organizational development.

The process at this point is to gain approval from the PUC to move forward with the startup of a new nonprofit organization. The PUC's role has two parts:

- + First, the Commission must determine whether the proposed organizational structure is reasonable. If it agrees with the proposed recommendations, the next steps will begin immediately. If there are concerns, those concerns will be addressed and brought back to the Commission for consideration.

- ✦ Second, the Commission must approve an initial board of directors. The selection of board members will be guided by recommendations of an advisory committee convened by PUC staff that will identify and recruit potential directors.

After the initial board has been recruited and approved by the PUC, the final steps of incorporation and recognition as a nonprofit will take place. The board of the new organization will begin immediately implementing the first steps of organizational development, including strategic planning, management recruiting, policy development and approval (in many cases based on initial recommendations already developed), development of advisory committees and other activities.

The goal of these steps is to have an organization with a clear strategic plan, an initial staff and the ability to begin fulfilling the mandate established by SB 1149 by October 1, 2001. While the organization will not have a full budget available from the first day, it will need to be capable of beginning the key activities by that date at the latest.

Overarching Approach to Start-up

The start-up of the new nonprofit organization requires many different levels of decisions. These decisions include:

- ✦ Decisions that must be made by the PUC in fall 2000 to move forward with the organizational development process.
- ✦ Decisions that must be made by the board of the new nonprofit to define the directions, plans and policies of the new nonprofit organization.
- ✦ Decisions that must be made by the PUC in spring 2001 to contract with the new nonprofit organization to fulfill the responsibilities of SB 1149/ORS 757.612(3).
- ✦ Implementation decisions that will come after the organization has begun implementing the strategic plan and fulfilling the contract with the PUC.

The convening committee recognized that much of the stakeholder interest is in the details of the strategic plan and the implementation approach. But the committee also recognized that those decisions would best be made by the board of directors, with considerable input from a variety of stakeholders interested in the decisions of the board.

Likewise, details of the grant agreement between the nonprofit organization and the PUC will be critical to ensure that the organization fulfills the public purpose requirements appropriately and in the best interests of the contributing customers. However, many of those details can be anticipated but not completely defined until the organization has had the opportunity to develop its strategic and implementation plans.

Therefore, the committee focused its recommendations on one particular objective: providing the PUC with the ideas and recommendations it needs to move forward on the development of the new organization. This proposal answers the questions necessary to move forward with the incorporation

and organization of the new entity. It also highlights many issues and guidelines that will be important to future decisions. But the committee purposely does not outline details that will fall to the board and to the PUC for future decisions. The committee believes that decisions such as the vision, mission, and goals of the organization will be best decided by the board of directors working with its staff and advisory committees. The committee also believes that more specific recommendations regarding the contractual relationship between the organization and the PUC will be important once the entity has incorporated and organized, developed its plans, and stands prepared to enter into a formal relationship with the PUC. The details of that agreement will be worked out between the organization and the PUC, with additional opportunities for public input to come at that time.

Purpose of the Organization

The new organization is borne by legislation establishing a public purpose charge that in part supports the development of conservation and renewable energy. Although the organization is a separate, nonprofit organization, independent from the State of Oregon and governed by an independent board of directors, it nonetheless derives its primary purpose from the mandate of the legislative language of SB 1149 and is fully and regularly accountable to the PUC.

Purpose is defined in two ways for a nonprofit organization. Initially, a purpose statement appears in the articles of incorporation. This statement is broad, establishing the full range of operational activities within which the organization will function. This statement should be broad enough to capture the full range of organizational direction over the life of the organization – focused within the core, fundamental role that the organization plays.

For the new organization, the purpose statement proposed for the articles of incorporation is **to support the development of cost-effective local energy conservation, market transformation energy conservation, and renewable energy resources for utility customers in Oregon.**

The purpose is also defined in the mission of the organization. The new board of directors will write a mission statement, along with programmatic and organizational goals, which will specifically describe the organization's immediate purpose and clearly define what the organization does and what it does not do. This is the fundamental policy statement of the board of directors, used as a foundation for the development of additional specific details within the strategic plan. This mission, like the purpose, must incorporate the scope of work defined by SB 1149/ORS 757.612(3), as well as any additional work the organization might do with support from private foundations, other public agencies, or other sources of funding.

A grant agreement between the PUC and the nonprofit will establish guidelines more specific than the mission statement that the organization must follow in spending money provided through the mandate of SB 1149/ORS 757.612(3). These guidelines will become contractual requirements to receive funding through the PUC's authority.

Organizational Framework and Structure

The convening committee recommends the following framework for the start-up of the new organization. Many of its components will appear in the bylaws of the new organization. Others will guide ongoing governance and management of the organization. In addition, some of these recommendations likely will appear in the grant agreement between the PUC and the new organization.

Board of Directors

1. A board of directors of seven Oregon residents will govern the organization (draft bylaws provide for a minimum of five and maximum of eleven members). Board members will be required to abide by state law governing not-for-profit conflicts of interest (ORS 65.361).
2. The initial board of directors will be approved by the PUC based on recommendations provided by an organizational advisory committee. The board of directors for the organization will elect all subsequent directors. The members of the board will be selected based on specific criteria established in the organization's board development policies. These criteria will follow any general guidelines provided by the PUC.
3. Directors will serve a three-year rotating term that can be renewed. The initial terms of the board will be split between one-, two- and three-year terms to establish the initial rotation, but after the initial appointments all terms will be for three years.
4. A non-voting ex-officio board member will be selected by the PUC to serve on the board of directors. The board may identify other non-voting board members to add to the board, primarily to provide strong, ongoing communication between the organization and other key partners. Non-voting members will not be counted for quorum purposes, participate in votes of the board or serve as officers.

Decision Making

1. The board of directors will be responsible for making all decisions affecting the direction and governance of the organization. This includes the strategic direction of the organization (vision, mission and goals) and overarching policy decisions. This will also include budget approval and oversight, and hiring and supervising the executive director. Most decisions of the board will require approval by a majority of directors. Amendments to Articles of Incorporation or Bylaws will require the approval of 70 percent of the directors.
2. The executive director will hire and manage all staff of the organization, based on personnel policies and procedures established by the board.
3. The executive director of the organization will have the authority to make decisions necessary to implement the direction and policies established by the board. The board will approve all expenditures of the organization based on recommendations provided by staff and any additional advisors desired by the board.

4. An appeals process for decisions made by staff will be established by the board. The appeals process will determine whether decisions delegated to staff by the board actually fulfilled the direction intended by the board, and whether processes defined by the organization were followed.
5. The board will seek direction from the PUC for any decision that it believes goes beyond its authority as an independent organization working to implement provisions of SB 1149. The board will define the issues requiring PUC direction and input.
6. The board may delegate management authority to the executive director but must retain overall accountability. Delegation to staff may include responsibility to develop and manage programs consistent with the plans and policies established by the board, including the authority to spend funds according to approved budgets.

Relationship to PUC

1. The PUC will approve the initial board of directors for the new organization.
2. The PUC will authorize funding for the organization through a Commission order and a grant agreement that establishes specific guidelines that the organization must follow to continue to receive funding from the PUC. Either party will have the authority to cancel the grant agreement with 60 days notice.
3. The PUC will review regular budget reports from the organization and will have an opportunity to raise concerns about any general or specific elements of the budget.
4. Public purpose funds advanced to the corporation which have not been spent or otherwise committed will be deemed to be held "in trust" by the corporation for the PUC. The funds will not be considered to belong to the corporation until committed or expended in a process that will include PUC review. In the event of a termination of the agreement or dissolution of the corporation, the PUC will control the ultimate distribution of any "uncommitted" funds. For any other assets accumulated by the organization, the board will distribute the assets to another 501(c)(3) entity that is doing work similar to the organization, as required by state law.
5. The PUC will select a non-voting ex-officio member to serve on the board on an ongoing basis.
6. The new organization will develop a strategic plan within its first year and at least every five years thereafter. The organization will communicate to the PUC the direction and strategies for each five-year plan and any significant revisions to the plan in a report.
7. The organization will provide an annual report to the PUC reviewing the progress of the organization toward the implementation of the strategic plan and any other reporting guidelines defined within PUC's contract agreements.
8. The organization will respond expeditiously to any PUC request for information concerning the organization's activities related to SB 1149.

9. The organization will provide an annual financial report to the PUC that includes a thorough, independent audit of finances within a year of completing each annual budget cycle.

Funding

1. The organization will receive funds collected by the utilities according to the conservation and renewable resource allocations determined by the PUC for implementing the elements of the organization's strategic plan consistent with the purposes of SB 1149/ORS 757.612(3).
2. A portion of the funding will support operations. The budget for operations will be kept as low as possible, balancing efficiency with overall organizational effectiveness.
3. The organization may seek and accept funding from other sources, including private foundation grants. These grants would be used to support activities that are consistent with the mission and purpose of the organization.

Committees

1. An advisory committee for renewable resources and an advisory committee for conservation will be established to provide advice and resources to support the organization. The role of the advisory committees is to advise the board in the development of the strategic plan and the staff with the implementation of key elements of the plan.
2. An Executive Committee may be created to coordinate the work of all governing committees and to act on behalf of the board on an emergency basis between board meetings for certain specific actions.
3. Other standing committees of the organization may be created as needed to support the governing responsibility of the board, but will not have any authority to act on behalf of the board.
4. Management committees may be formed from time to time by the executive director to support management and program implementation issues.
5. Individuals may also serve as ad hoc advisors to board and staff on key issues facing the organization.

Meetings

1. Regular meetings of the board of directors will be open to the public. Executive sessions of the board (excluding everyone but board members) may be called from time to time to deal with sensitive organizational issues including personnel matters.
2. A schedule of regular meetings of the board will be made public and distributed to anyone expressing interest. The board will provide a minimum of seven days notice for any additional board meetings.

Guidelines for the Organization

The convening committee proposes that the following guidelines be used to define how the organization achieves its mission. These and other guidelines will be incorporated into a grant agreement between the organization and the PUC governing how funds from SB 1149/ORS 757.612(3) will be expended.

1. Program funding will seek to encourage the development of competitive markets for energy efficiency services and renewable resources as a long-term outcome.
2. Public purpose funding will be competitively bid except when circumstances warrant an alternative approach.
3. Funds for new renewable resources will be used to offset all or a portion of their above-market costs.
4. At least 80 percent of the conservation funds will be spent within the service area of the utility that collected the funds.
5. Individual conservation programs will be designed to be cost-effective and will be independently evaluated on a regular basis. This guideline should not restrict investment in pilot projects, educational programs, demonstrations or the like.
6. A majority of the conservation funds will be spent or committed in the year the funds are received.
7. All classes and geographic areas of funding consumers should benefit from the public purpose expenditures.
8. The organization will work to complement, not compete with, existing conservation and renewables programs.
9. The board will be broadly representative of the customers whose investment provides the funding to support the organization.
10. Board members shall have no direct financial conflict of interest with the activities of the organization.
11. The costs of operating the organization will be reasonable and supportive of the organization's efforts toward cost effectiveness, and will balance the lowest possible administrative cost with overall organizational effectiveness.
12. The organization will operate under professional standards of conduct and organizational effectiveness, consistent with the public interest and the mandates of SB 1149.
13. The organization will provide timely and accurate information to the PUC regarding the organization's programs and operations, including accounting for conservation and renewable resource funds separately.

Timeline for Organizational Development

The following preliminary timeline is intended to guide the next steps of organizational development.

